

REMARKS

A. Status of Claims

Claims 1-27, 41-59, 71, and 72 are pending in this application. Claims 28-40 and 60-70 were previously canceled without prejudice.

Applicants respectfully submit that no new matter has been introduced by virtue of this amendment.

B. Substance of Interview

In accordance with the provisions of 37 CFR 1.133, Applicants herein make of record the substance of the telephone interview conducted on December 11, 2007, between Applicants' attorney Oleg Ioselevich and Supervisory Patent Examiner Doug Hutton.

During the interview, the finality of the Office Action mailed on September 14, 2007 was discussed. In particular, it was submitted that on the second page of the Office Action it is stated that the Office Action is **non-final**, but on page 11 of the Office Action it is stated that the Action is **final**. It was requested that the Office Action be reissued to correct the inconsistency.

The Supervisory Patent Examiner stated to the Applicant's attorney that he should treat to the Office Action as a final Office Action.

Applicants respectfully disagree with the Office's determination and respectfully request that the finality of the Office Action be reconsidered.

In the event the finality of the Office Action is maintained, Applicants reserve the right to challenge the Office's position.

C. Claim Rejections- 35 U.S.C. § 103

In the Office Action, claims 1-27, 41-59, 71, and 72 were rejected under 35 U.S.C. §103(a) on the grounds of obviousness over U.S. Patent Application Publication No. 2003/0196098 (“the Dickinson reference”) in view of U.S. Patent No. 6,760,752 to Liu et al. (“the Liu reference”).

In response, Applicants submit that the rejection is improper as it relies in part on a reference (i.e., the Dickinson reference) that is not properly citable as prior art against the present application.

Applicants respectfully note that the Dickinson reference published on October 16, 2003, which is after the filing date of the present application (i.e., April 3, 2001). Accordingly, Applicants submit that the Dickinson reference is not prior art to the present application neither under 35 U.S.C. § 102(a) nor 35 U.S.C. 35 U.S.C. § 102(b). See 35 U.S.C. § 102.

Applicants further note that the Dickinson reference is also not prior art to the present application under 35 U.S.C. § 102(e) for the reasons set forth below.

Applicants submit that the Dickinson reference is a publication of a later filed U.S. nonprovisional application claiming a benefit of a reference based on the national stage (35 U.S.C. § 371) of an International Application **filed prior to November 29, 2000**¹.

Manual of Patent Examining Procedure states:

For U.S. application publications of applications that claim the benefit under 35 U.S.C. 120 or 365(c) of an international application filed prior to November 29, 2000, **apply the reference under 35 U.S.C. 102(e) as of the actual filing date of the later-filed U.S. application** that claimed the benefit of the international application.

¹ The Dickinson reference is “a continuation of application No. 09/180,377, filed on Nov. 3, 1998, now Pat. No. 6,609,196, filed as 371 of international application No. PCT/US98/15552, filed on Jul. 23, 1998.” See the Dickinson reference.

See MPEP, Section 706.02(f)(1)(I)(C)(3)(c) (emphasis added).

Manual of Patent Examining Procedure further states that “[i]f a later filed U.S. nonprovisional (35 U.S.C. 111(a)) application claimed the benefit of ... [an International Application filed prior to November 29, 2000], **the 35 U.S.C. 102(e)(1) date of the application publication of the later-filed U.S. application would be the actual filing of the later-filed U.S. application.**” See MPEP, Section 706.02(f)(1), Example 6 (emphasis added).

The Dickinson reference was filed on April 21, 2003. Accordingly, the 35 U.S.C. § 102(e) date of the Dickinson reference is April 21, 2003. See MPEP, section 706.02(f)(1).

The present application was filed on April 3, 2001, which is before the 35 U.S.C. § 102(e) date of the Dickinson reference. Accordingly, the Dickinson reference does not qualify under 35 U.S.C. § 102(e) as prior art to the present application.

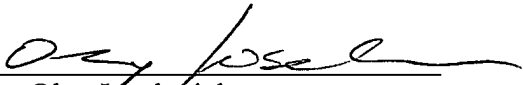
For the foregoing reasons, Applicants submit that the rejection is improper as it relies in part on the reference (i.e., the Dickinson reference) that is not properly citable as prior art against the present application, and respectfully request withdrawal of the rejection.

Conclusion

Reconsideration of the present application is respectfully requested. If, upon review, the Examiner is unable to issue an immediate Notice of Allowance, the Examiner is respectfully requested to telephone Applicant's undersigned attorney at the number set forth below in order to resolve any outstanding issues and advance the prosecution of the case.

An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,
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